

2-52A. Class II Administrative Penalty: Initiation of Action; Public Notice; Consultation with State; Negotiation and Signing Consent Agreements; and Assessing Penalties (1200 TN 350 2-52A)

1. AUTHORITY. Pursuant to Sections 309(g) and 311 of the Clean Water Act, the authority:

- a. To make findings of fact; propose penalty to be assessed; issue, amend, or withdraw Class II administrative complaints;
- b. To provide, or cause to be provided, public notice of proposed assessment and provide commentors with copies of orders entered on consent or on default;
- c. To consult with states, as required;
- d. To sign consent agreements between the agency and the party against whom a Class II penalty is proposed to be assessed;
- e. To issue final orders assessing Class II penalties where no hearing is requested by the respondent or pursuant to a consent agreement; and
- f. To decide petitions by commentors to set aside final orders entered without a hearing and provide copies and/or notice of the decision.

2. TO WHOM DELEGATED.

- a. The authorities in 1.a., 1.b., 1.c., and 1.d. are delegated to the Director, Enforcement and Compliance and Assurance Division (ECAD).
- b. The authority to issue final orders under 1.e. is delegated to the Regional Judicial and Presiding Officer.
- c. The authority in 1.f. is reserved for the Regional Administrator.

3. LIMITATIONS.

- g. The delegates may exercise the above authorities only for those cases initiated by Region III.
- h. The delegates must obtain the advanced concurrence of the Regional Counsel or his or her delegatee on legal sufficiency of documents to be issued prior to exercising the authorities in 1.a or 1.d.

4. REDELEGATION AUTHORITY.

- a. The authorities in 1.b. and 1.c. may be redelegated to the staff level.

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- b. This authority may not be redelegated without formal amendment.
- c. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. ADDITIONAL REFERENCES.

- a. Sections 309(g) and 311 of CWA.
- b. Chapter 1, Delegations 1-37 and 1-38 entitled "Hearings" and "Adjudicatory Proceedings".
- c. 40 CFR Part 22.

6. SUPERSESSION. Delegations Manual, CWA, Regional Delegation 2-52-A. Class II Administrative Penalty: Initiation of Action; Public Notice; Consultation with State; Negotiation and Signing Consent Agreements; and Assessing Penalties, 1200 TN RIII 205 (November 30, 2018).

Date: APR 15 2019


Cosmo Servidio
Regional Administrator